IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

J U D G M E N T

(1) D.B.CRIMINAL MURDER REFERENCE NO.1/2006
(State of Rajasthan Vs. Neema Ram)

(2) D.B.CRIMINAL JAIL APPEAL NO.130/2006
(Neema Ram Vs. State of Rajasthan)

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D.B.CRIMINAL MURDER REFERENCE & JAIL APPEAL AGAINST THE JUDGMENT & ORDER DATED 25.01.2006 PASSED BY THE ADDITIONAL SESSIONS JUDGE (FAST TRACK) NO.2, JODHPUR IN SESSIONS CASE NO.20/2005.

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DATE OF JUDGMENT: 17th APRIL, 2006

P R E S E N T

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE MANAK MOHTA

Mr.Kalu Ram Bhati, Amicus Curiae
Mr.V.R.Mehta, Public Prosecutor

BY THE COURT(PER HON'BLE MR.MATHUR J.)

REPORTABLE/-

1. It was by a midnight blitz that two sleeping sons of principal witness P.W.6 Mst.Jhamku in her dwelling house were axed to death allegedly by the appellant Neema Ram, the third

and the youngest son. The learned Additional Sessions Judge (Fast Track) No.2, Jodhpur by impugned judgment dated 25.1.2006 having found the charge under Section 302 I.P.C. proved and considering the rarest of rare case has made the instant reference for confirmation of the death sentence. He has also inflicted fine of Rs. 2000/- and in default of payment to further undergo one month simple imprisonment.

2. The picture which has been projected from the deposition of principal witness P.W.6 Mst.Jhamku is to the effect that in the intervening night of 24th and 25th July, 2005 at about 3:00 A.M. she woke up sensing something wrong and rushed towards the `Bada'. She found appellant Neema Ram standing with the "Kunt" (a sharp edged weapon) in hand. The wife of Bhaga Ram namely P.W.8 Mst.Dhanki was weeping. Her husband Bhaga Ram was lying injured. He had sustained injuries on the head and other parts of body. The other son Pappa Ram, who was sleeping in the compound was also done to death by the appellant Neema Ram. There were bleeding injuries on various parts of his body. The appellant ran away from the house immediately. Their hue and cry attracted the villagers. On receiving a telephonic information police arrived on the spot in the morning. A written information report Ex.P12 was given to the police on the spot by P.W.4 Gokal Ram stating inter alia that

in village Mortuka, P.W.6 Mst.Jhamku a widow of Budha Ram lived with her married son Bhaga Ram and another son Pappa Ram. The third son Neema Ram was in a private job at Goa. He had arrived in the village about 15 days prior to the date of incident. Thus, at the time of incident all the three brothers stayed in their house alongwith their mother P.W.6 Mst.Jhamku. On the fateful day at about 3:30 A.M., P.W.11 Bija Ram and P.W.7 Narayan visited his house and took him to the house of Bhaga Ram. He found the dead body of Pappa Ram lying on the cot. There were injuries of sharp edged weapon on various parts of his body. Bhaga Ram was lying injured. He was taken to the hospital for treatment. On inquiry it was disclosed by Mst.Jhamu that her son appellant Neema Ram killed Pappa Ram by causing `Kunt' injuries. He also inflicted injuries to Bhaga Ram. The appellant fled away from the place of incident. On this information, a case was registered for offence under Sections 307 & 302 I.P.C. at Police Station Luni, District, Jodhpur. The police prepared inquest report and the site plan. The appellant was arrested on the same day at 3:30 P.M. vide Ex.P40. In pursuance of the information given by him a blood stained `Kunt' was recovered on the next day i.e. on 25th July, 2005. Bhaga Ram died in the hospital on 2.8.2005. The autopsy of the dead body of Pappa Ram was conducted by P.W.10 Dr.Jagdish Jugtawat. He noticed the following injuries on the body of Pappa

Ram vide Ex.P20 :-

(1) Incised wound 11 cm x 1 cm x bone deep on Lt.side of fore head with fracture of fore head bone.

(2) Incised wound 8 cm x 2 cm x muscle deep on Lt.side of face and pinna.

(3) Incised wound 3 cm x 1 cm x muscle deep on Lt.cheek.

(4) Incised wound 4 cm x 1 cm on Lt. side of neck 1/3 laterally with cutting the muscles and vessels (Jugalar vessels).

(5) Incised wound 4 cm x 1 cm x muscle deep on Lt.side neck 1/3 Lat. With cutting the jugalar vessels.

(6) Incised wound 11 cm x 1 cm x muscle deep on chest below clavicle.

In his opinion the cause of death was shock and haemorrhage due to multiple injuries.

3. P.W.13 Dr.V.K.Malhotra conducted the autopsy of the dead body of Bhaga Ram and noticed the following injuries vide Ex.P.21:-

(1) Stiched wound 12 cm long on Rt.fronto parietal region.

(2) Stiched wound 13.5 cm long on Rt. fronto parietal & temporal region.

(3) Stiched wound 8.5 cm long on Lt. fronto parietal region.

(4) Abrasion 0.5 cm x 0.3 cm on Rt. side of forehead.

(5) Tracheartomy present over neck.

(6) Stiched wound 3 cm long at back of Lt. ring & little finger dorsally.

(7) Abrasion 1./5 cm x 0.5 cm on Rt. leg 1/3 ant.

(8) Abrasion 0.5 cm x 0.5 cm on Lt. middle toe dorsally.

(9) Abrasion 2 cm x 1 cm on back of Rt. side of chest 1/3.

(10) Abrasion 1.5 cm x 1 cm on Rt. elbow post.

(11) Abrasion 1 cm x 1 cm near injury No.10.

In his opinion the cause of death was head injury.

4. After usual investigation police laid charge-sheet against the appellant for offence under Section 302 I.P.C. The appellant denied the charges levelled against him and claimed trial. The prosecution adduced oral and documentary evidence to bring home its case. The appellant denied the correctness of the prosecution evidence appearing against him. In his statement under Section 313 of the Code of Criminal Procedure he pleaded innocent. He stated that there was a land dispute with his uncle Khima Ram. He has been falsely implicated by misleading his mother. The trial court discarded the evidence of recovery but relying on the testimony of P.W.6 Mst.Jhamku and P.W.8 Mst.Dhanki corroborated by the medical and other evidence found the prosecution case proved and as such convicted and

sentenced the appellant in the manner stated above.

5. We have heard Mr.Kalu Ram Bhati, learned Amicus Curiae for the appellant and the learned Public Prosecutor and carefully scrutinized the evidence on record.

6. Challenging the conviction of the appellant, it is submitted by the learned counsel that a bare reading of the statements of P.W.6 Mst.Jhamku and P.W.8 Mst.Dhanki shows that they are not the witness of the occurrence. On their own saying, they did not witness the incident. The evidence of recovery has been discarded by the trial court, as such there is no evidence worth the name to connect the appellant with the alleged crime. On the other hand it is submitted by the learned Public Prosecutor that both the witnesses are most natural and their testimony positively indicates the implication of the appellant in the crime. The learned Public Prosecutor has also challenged the finding of the trial court with respect to the incriminating evidence of recovery of weapon of offence. It is submitted that the trial court has wrongly discarded the evidence or recovery of weapon of offence i.e. `Kunt'.

7. The testimony of P.W.6 Mst.Jhamku and P.W.8 Mst.Dhanki being crucial, we have carefully scrutinized and

tested their testimony. P.W.6 Mst.Jhamku is the mother of both the deceased and the appellant. It is unfortunate that she lost her husband sometime back of the incident and out of the three surviving sons, two were done to death and the third sentenced to death. What a curse for her. Be that as it may, she deposed that the appellant Neema Ram was employed in a private job at Goa. He visited the village about 15 days back from the date of the incident. All the three sons after taking food went to bed on the fateful day. She was sleeping inside the house along with the appellant Neema Ram. Pappa Ram was sleeping in the compound of the house. Bhaga Ram was sleeping with his wife in the court yard. At about 3:00 A.M. she woke up sensing something wrong and rushed towards the court yard and found the appellant infront of her carrying a `Kunt' in his hand and the wife of Bhaga Ram namely Mst. Dhanki was weeping. Bhaga Ram was lying injured and flittering. There were number of injuries on his body. The other son Pappa Ram, who was sleeping in the compound was lying dead. There were injuries on his body. The mattresses were stained with blood. The appellant ran away from the house immediately. Her cries attracted the villagers. An information of the incident was given to the police. Bhaga Ram was taken to the hospital. In the cross examination she admitted that Bhaga Ram was sleeping in the court yard along with his wife. She also admitted that there is no straight route from the house to the

court yard. For going to the court yard one is required to come out of the house and take a round. She also stated that Pappa Ram was sleeping at a distance of about 10 ft. She further stated that Pappa Ram was killed first and subsequently Bhaga Ram. She also admitted that the wife of Bhaga Ram did not disclose to her the name of the assaillant.

8. P.W.8 Mst.Dhanki is the wife of deceased Bhaga Ram. She stated that the appellant, who was in a private job at Goa had arrived in the village about 15 days back. All the three brothers stayed together. On the fateful day she was sleeping with her deceased husband Bhaga Ram in the court yard on the common cot. Her mother-in-law P.W.6 Mst.Jhamku, the appellant Neema Ram and deceased Pappa Ram were sleeping in the compound of the house. In the night at about 3:00 A.M. her husband abruptly slumped down of the cot. The appellant was carrying a `Kunt' in his hand. He ran away with `Kunt' in hand. Her husband had sustained injuries on his body. There was profused bleeding from the injuries. She raised cries which attracted her mother-in-law and others. Her mother-in-law tried to chase the accused Neema Ram. She also found the brother-in-law Pappa Ram lying dead in the compound. There were injuries on various parts of his body. Her husband was taken to the hospital. She stated that Bhaga Ram and Pappa Ram were killed

by appellant Neema Ram. In the cross examination she admitted that she was sleeping with her husband on the cot. Her blood stained clothes were seized by the police. She also admitted that her mother-in-law had inquired the direction in which appellant Neema Ram had gone. She denied the suggestion that at the time of incident, she was sleeping with her mother-in-law.

9. On reading of statements of both the witnesses it appears that the incident had taken place in the compound and the court yard of the house. No body had seen how the deceased were killed and in what manner and fashion. But from the statements of P.W.6 Mst.Jhamku and P.W.8 Mst.Dhanki it emerges that just after the incident the appellant was seen on the spot with the weapon of offence namely `Kunt'. The statements of both the witnesses are natural. P.W.6 Mst.Jhamku is the mother of the appellant and there is no reason for her to falsely implicate him and screen the actual assaillant. We are, therefore, clearly of the view that the testimony of both the witnesses i.e. P.W.6 Mst.Jhamku and P.W.8 Mst.Dhanki is quite natural and trustworthy. However, to lend assurance that the ghastly crime was committed by the appellant, we may look to the other corroborative evidence. P.W.4 Gokal Ram is the uncle of the appellant. He stated that hearing about the unfortunate incident from P.W.7 Narayan he rushed to the place of incident.

He found Pappa Ram dead and Bhaga Ram injured. Neema Ram had ran away. He gave information of the incident to the police vide Ex.P12. P.W.7 Narayan is a neighbour. He stated that he was attracted by the cries of Mst.Jhamku and others. He also stated that number of villagers had assembled at the spot. He went to P.W.4 Gokal Ram. This witness did not support the prosecution case. As such he was declared hostile. P.W.11 Bija Ram is the cousin brother of the deceased and the appellant. He stated that hearing the cries at about 3:00 A.M. he rushed to the spot. Narayan had also arrived. He found Pappa Ram dead. Bhaga Ram had sustained injuries and he was taken to the hospital. He was told that Neema Ram after killing Pappa Ram by `Kunt' ran away. Thereafter, Narayan went to inform Gokal Ram about the incident. Thus, the testimony of two witnesses namely P.W.6 Mst.Jhamku and P.W.8 Mst.Dhanki finds corroboration from the statements of P.W.4 Gokal Ram and P.W.11 Bija Ram and the prompt F.I.R.

10. Coming to the evidence of recovery, the appellant was arrested vide Ex.P14 on 25th July, 2005. While in custody a blood stained `Kunt' was recovered vide Ex.P3 from his possession in pursuance of the information given by him vide Ex.P15 in presence of motbirs P.W.1 Brijraj Singh and P.W.3 Bhera Ram. The `Kunt' was seized and sealed on the spot and

packed in packet marked C. P.W.9 Ann Raj Singh is the Investigating Officer. He has stated that the appellant Neema Ram got the blood stained `Kunt' recovered concealed in a bush in the western side of his field. He prepared the site plan of the place of recovery Ex.P4. Both the motbirs have not supported the prosecution case and as such they have been declared hostile. P.W.12 Hari Singh, Incharge of the Malkhana of Police Station, Luni deposed that the sealed packet containing articles in F.I.R. Case No.81/2005, which included `Kunt' were deposited by the Incharge of the Police Station P.W.9 Ann Raj Singh. He made an entry of the said articles in the Malkhana Register at S.No.152. The packets were deposited on 25.8.2005. It may be stated that in the Malkhana Register at S.No.152 the date of entry of the articles at Column No.6 has been shown as 24.7.2005. The trial court rejected the evidence of recovery having found that while the `Kunt' was recovered on 25th July, 2005 vide Ex.P3, it was shown to have been received in the Malkhana on 24th July i.e. a day before.

11. We have carefully scrutinized the evidence of P.W.12 Hari Singh, P.W.9 Ann Raj Singh and the copy of the relevant extract of Malkhana Register Ex.D1. P.W.12 Hari Singh had admitted in the cross examination that inadvertently he did not indicate any remark in Column No.6. He had wrongly made entry

of receipt of `Kunt' on 24th July, 2005. It appears that there is inadvertent mistake by P.W.12 Hari Singh with respect to date of entry of the `Kunt' in the Malkhana Register. The articles were given to P.W.2 Girdhari Singh for delivery in the Forensic Science Laboratory after obtaining the requisite certificates from the Office of the Superintendent of Police, Jodhpur. P.W.2 Girdhari Singh has stated that on 25.8.2005 he received the articles from Hari Singh in sealed condition for delivery in the Forensic Science Labotratory at Jodhpur. On the same day he visisted the Office of Superintendent of Police, Jodhpur and after obtaining the requisite letter Ex.P8 from P.W.5 Bhawani Singh he deposited the articles in the Office of Forensic Science Laboratory at Jodhpur and obtained the receipt Ex.P9. He also stated that the articles remained sealed and intact during his possession. The FSL report Ex.P22 shows that five packets were received in sealed condition, which tallied with the specimen seal impression forwarded. As per the FSL report the `Kunt' was stained with human blood. We are of the view that the trial court committed error in discarding the evidence of recovery. In statement under Section 313 of the Code of Criminal Procedure the appellant has not given any explanation as to the recovery of blood stained `Kunt' from his possession. Thus, the evidence of recovery as against the appellant is of conclusive nature. Thus, taking into account the ocular version of P.W.6 Mst.Jhamku and P.W.8

Mst.Dhanki to the effect that the appellant was found standing carrying blood stained `Kunt' in his hand just at the moment when Bhaga Ram was found injured and Pappa Ram dead is relevant fact of incriminatory character. In absence of a reasonable explanation, it leads to the inference that it was none else but the appellant, who committed murder of Bhaga Ram and Pappa Ram. The conduct of appellant running away from the place of incident instead of taking care of his brothers and he was apprehended only on the next day of the incident is of great significance. In view of above discussion, we are of the view that prosecution has succeeded in establishing its case beyond any manner of doubt holding the appellant guilty of murder of Bhaga Ram and Pappa Ram. The trial court has rightly convicted the appellant on the charge of murder of Bhaga Ram and Pappa Ram and convicted him of offence under Section 302 I.P.C.

12. This take us to consider the death penalty awarded by the trial court. It is contended by the learned counsel for the appellant that the case does not fall within the category of rarest of rare case, which would invite capital punishment. The learned counsel has placed reliance on various decisions of Apex Court and this Court viz. Bachittar Singh & Anr. vs. State of Punjab reported in 2002(2) SCC 125, Dharmendrasinh vs. State of Gujarat reported in AIR 2002 SC 1937, Vashram Narshibhai

Rajpara vs. State of Gujarat reported in 2002(9) SCC 168, Prakash Dhawal vs. State of Maharashtra reported in 2002(2) SCC 35 and State of Rajasthan vs. Deva Ram reported in 2001 (2) R.Cr.D. 422(Raj.).

13. On a perusal of the evidence and materials on record, we find that apart from the solitary incident in question, there is no evidence on record either oral or documentary, which would suggest about the misconduct of the appellant in the past. There is also no evidence on record to suggest that the appellant would be a menace and threat to the harmonious and peaceful coexistence of the society. The instant case is very close to a decision of the Apex Court in Prakash Dhawal Khairnar case (supra), which has been referred to in another decision of the Apex Court in Bachittar Singh vs. State of Punjab(supra). In that case also the accused done to death his own brother, brother's wife and children out of a land dispute. In the instant case the prosecution has not been able to show any motive behind the murder of the two brothers by the appellant. On the contrary, the evidence is that the relations between the three brothers were cordial. Thus, no doubt the crime was heinous and brutal but at the same time it would be difficult to hold that it falls in the category of rarest of rare case. Viewed from the aforesaid perspective we find that the appellant must be given a chance to

repent for what he has done is neither approved by the law nor by the society and be reformed or rehabilitated and become good and law-abiding citizen of the society.

14. Consequently, the death reference made by the trial court vide judgment dated 25.1.2006 is rejected. The jail appeal is partly allowed. While maintaining the conviction under Section 302 I.P.C., the sentence of death awarded to appellant Neema Ram is commuted to imprisonment for life. The direction of payment of fine of Rs.2000/- remains intact. The appellant is in Jail, he shall undergo the remaining part of the sentence. The copy of the order be sent to the appellant in Jail.

(MANAK MOHTA) J. **(N.N.MATHUR) J.**

BKS/-